

Region 10 Briefing Paper for the Office of the Regional Administrator

MEETING/EVENT TITLE:

"Deschutes TMDL Notice of Intent from Northwest Environmental Advocates – How to Respond"

MEETING DATE: 11/7/2017 10:00 am – 10:45 am

LOCATION: Dan's Office

CONFERENCE CALL LINE: (b) (6)

PREPARED BY: Chris Zell and Leah Brown

DATE: 10/19/2017

INVITED EPA ATTENDEES: Dan Opalski; Jim Havard; Jim Curtin; Holly Arrigoni; Chris Lewicki; Dave Croxton;

Laurie Mann; Leah Brown; Jennifer Byrne; Cara Steiner-Riley; and Chris Zell

I. REQUESTING OFFICE

Office of Water and Watersheds / Watershed Unit

II. TIMING

On August 23, 2017, NWEA provided a Notice of Intent (NOI) to sue EPA under the Clean Water Act (CWA) for failure to perform the mandatory duty of approving or disapproving the Deschutes River TMDL within the statutorily mandated timeframe. NWEA may file suit 60 days from NOI submittal (~ October 22, 2017). Based on preliminary conversations with NWEA on 10/13/2017, we understand that NWEA intends to file soon after the 60-day NOI period expires.

III. PURPOSE

- Provide HQ (Watershed Branch) a summary snapshot of the Deschutes TMDL and administrative history
- Share outcomes from informal NWEA conversations held with Ecology on 10/13/2017
- (b) (5)

 Meeting outcomes include agreement on recommended path forward and identification of additional briefings to confirm recommendation

IV. BACKGROUND/HISTORY

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi²) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. During early stages of development (~2005-2014), Ecology planned to submit a TMDL containing both freshwater (Deschutes) and marine (Budd Inlet) water quality limited segments. (b) (5)

Ecology decided to split the TMDL in freshwater

and marine segments. Ecology submitted the freshwater (Phase 1) Deschutes TMDL to EPA for approval on December 17, 2015. (b) (5)

The submitted 2015 TMDL package included a request that EPA approve allocations for 73 Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment). Beginning in February 2016, EPA has discussed with Ecology opportunities to remedy legal and technical shortcomings of the TMDL that have been identified by both EPA (WU, ORC) and potential plaintiffs (NWEA, Squaxin Island Tribe). (b) (5)

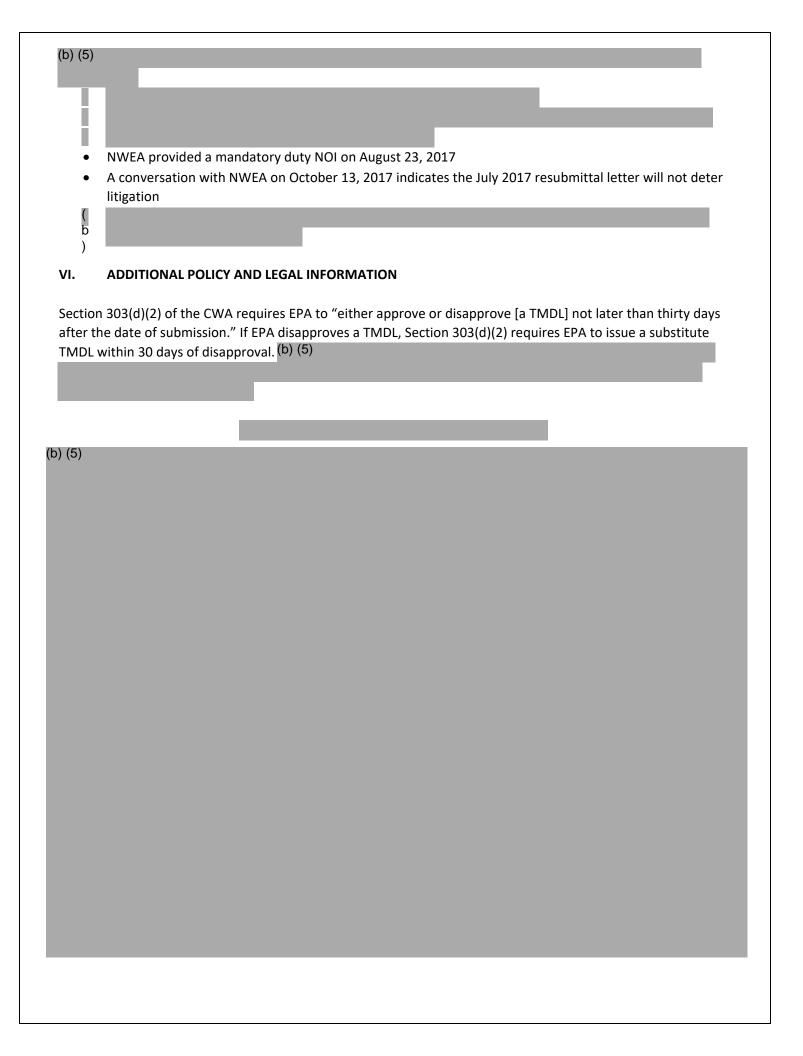
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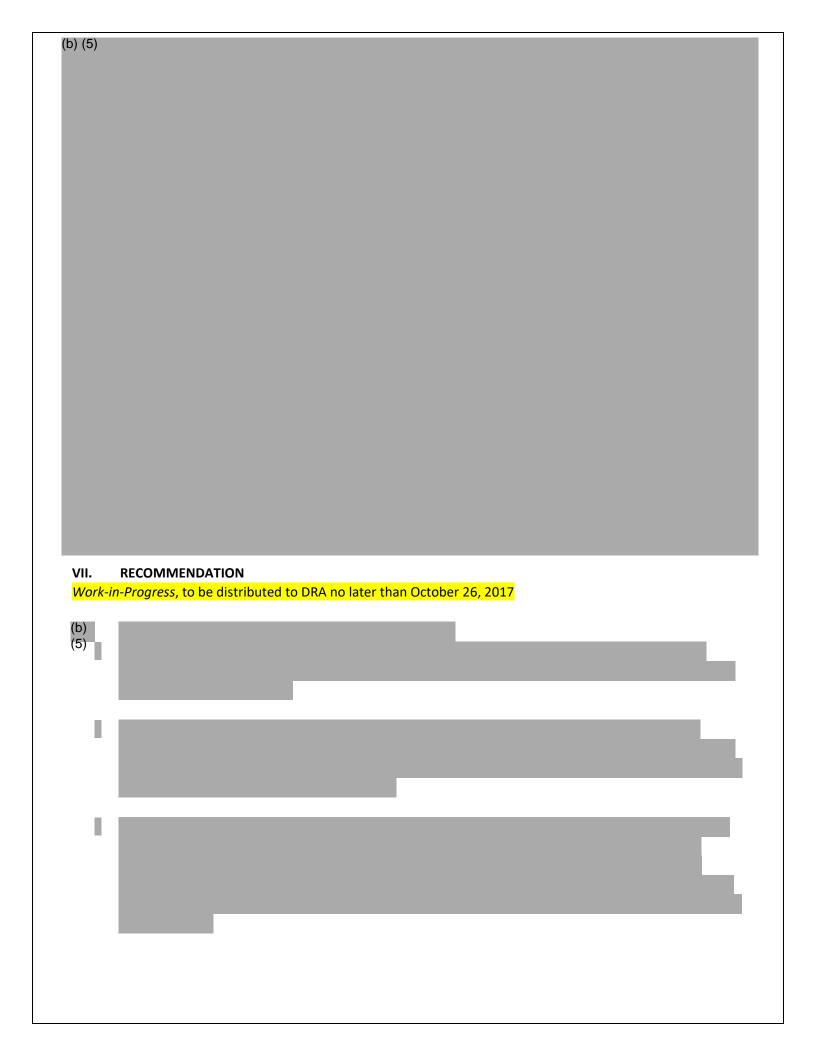
Ecology chose to send another submittal letter concerning the Deschutes TMDL on July 17, 2017, and asked EPA "to focus" on a smaller subset (n = 46; 73-27) of TMDLs for bacteria, temperature, and fine sediment. The 2017 letter includes nuanced language that infers Ecology will revisit 'unapproved segments' as part of the Budd Inlet TMDL. In addition, the 2017 letter included bacteria and water temperature TMDL improvements prepared by EPA to assist Ecology to remedy acknowledged deficiencies. (b) (5) ACP

Deschutes (WA) TMDL Key Dates

Dates	Event		
2004	Sampling Plan Completed		
2003 - 2007	Monitoring		
2007 - 2014	TMDL Development		
April 2014	Announcement to Submit Freshwater Components Only		
December 2015	Ecology Submitted TMDL to EPA		
February - October 2016	EPA Concerns Shared with Ecology		
June 2016	Ecology Hosted Squaxin Island Tribe – Tribal Coordination		
	Meeting		
August 2016	EPA/Ecology Discussion with NWEA in Portland, OR		
(b) (5)			
January 2017	EPA Received Puget Sound FOIA from NWEA		
March 2017	EPA Developed Bacteria TMDLs		
June 2017	EPA & Ecology Negotiate "Resubmit" Letter		
July 2017	EPA Received Resubmit Letter from Ecology		
(b) (5)			
August 2017	EPA Received Deschutes NOI from NWEA		
(b) (5)			
October 13, 2017	EPA Region 10 Discussion with NWEA, re: NOI		

V. KEY ISSUES





IX.	, , , ,						
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•	Dave will communicate recommended path forward to Ecology by ??/2017 Elaboration pending receipt of lawsuit and determination of final recommended option						
•	Elaboration penaling receipt of lawsuit and determination of final recommended option						





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(b) (5)		